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April 12, 2010

Ms. Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Comments on Proposed Rule Regarding Chartering and Field of Membership for Federal Credit Unions

Dear Ms. Rupp:

On behalf of the Maine Credit Union League, a trade organization representing Maine's sixty-six credit unions and their over 600,000 members, we would ask that you provide this letter to the members of the National Credit Union Administration Board as they consider the proposed rule on chartering and field of membership criteria for federal credit unions.

We appreciate the effort and motivation represented in the proposed rule. There can be no question that bright-line standards will offer a greater certainty, clarity and efficiency over the existing process, both for the federal credit unions that must abide by the framework, and for the NCUA as the regulator that must apply and enforce it.

We welcome the benefits that this revised regulatory schedule would bring and offer the following comments as to how it might be improved based on our experience and local community observations.

1. The Well-Defined Local Communities & the Narrative Approach.

a. Single Political Jurisdictions. Maintaining the single political jurisdiction as a *de facto* well-defined local community ("WDLC") makes sense and we support the continued inclusion of these communities as approved fields of membership. We would, however, urge that the rule be amended so as to include congressional districts as single political jurisdictions for chartering purposes. Congressional districts should be found by the Board to meet all of the elements of a WDLC.

The commentary accompanying the proposed chartering rule correctly points out that a community's boundaries must be well defined. Congressional districts meet the geographical certainty requirement of a community's boundaries. In the case of Maine, the state is divided into two congressional districts and the boundaries of those districts consist of county, town and city boundaries and may be readily ascertained from official sources.

As the Board's comment also points out, the second important characteristic of a WDLC is that there be sufficient social and economic activity among enough community members to assure that a viable community exists. By recognizing that a single political jurisdiction, such as a city, county or their political equivalent or any contiguous portion thereof automatically qualifies as a WDLC, the Board has already appropriately

recognized the validity of certain common denominators as constituting sufficient proof of common interests and/or interaction.

The fact that Maine voters are represented by separate congressional districts necessarily means that they will have adequate common interests and will also interact in the political process to choose their representative. Certainly a congressional district is made up of smaller political jurisdictions that act independently and create their own communities with distinct common interests and/or interactions; however, the same can be said of counties which are further divided into cities and townships, and for cities, which may be further divided into wards or city districts. The fact that the residents of the communities that comprise the various congressional districts for Maine interact in the electoral process, and all of the other activities that are part of democratic representation at the federal level, should be sufficient to support a finding by the NCUA Board that adequate common interests and/or interaction exist in a congressional district, just as is the case with respect to the other single political jurisdictions that are smaller than states.

Based on demographic data from the Census Bureau 2008 American Community Survey, the population of Maine's first congressional district was 667,199, while the population of the second congressional district was 649,257. Both of these figures are well within the 2.5 million population figure considered by the NCUA as a cap for the "statistical area" designations of WDLCs and are also significantly smaller than many counties and smaller single political jurisdictions to be found across the United States.

It is also worth pointing out that the standard adopted by the NCUA Board requires a WDLC to be comprised of individuals who have "common interests and/*or* interact." While we certainly believe that both common interests and interaction can be shown based on the NCUA's own standard, common interest *or* interaction in a specific political jurisdiction is enough to satisfy the chartering requirements. The fact of political interaction in the process of voting, volunteering, observing and otherwise taking part in the political process for a unified political jurisdiction, such as a congressional district, should be enough to satisfy the NCUA Board's requirements for a WDLC.

b. Statistical Areas.

As we consider the proposal regarding the introduction of statistical area based WDLCs, we feel further revisions are imperative.

Most important and in a general sense, the introduction of a strict statistical area analysis as the sole method for establishing multiple political jurisdiction communities is overly formalistic. It unnecessarily restricts the applicability of §1759(b)(3) of the Federal Credit Union Act because it will specifically exclude those communities that clearly are "well-defined local" communities or neighborhoods and therefore meet the legislative intent behind the community requirement, but which cannot be made to fit within the well intentioned but too limiting Procrustean bed proposed in the rule.

We do not wish to eliminate the "streamline" definition where it might provide benefits in other areas of the nation. However, requiring all four criteria of the test for a multiple political jurisdictional community to be met is unnecessarily inflexible. An approach should be considered that implements a more certain, accelerated and efficient review, but which also requires compliance with fewer than all of the listed criteria.

In this spirit of a more flexible concept of chartering, it should also be unnecessary to eliminate the current IRPS scheme for multiple political jurisdiction community chartering.

The criticisms leveled against the present system – that compiling the proof of community interaction or common interests can be difficult, time consuming and expensive may all be true, but those should be burdens to be considered and accepted (or not) by the individual credit unions. Every community in our nation is unique and a full and deliberate assessment of whether a "well-defined local community or neighborhood" exists - as intended under the Federal Credit Union Act - will necessarily require some level of informed subjective review as the narrative and supporting documentation is considered.

As the comment on the proposed rule also makes clear, the narrative review process can be time consuming for the NCUA. In our experience, the NCUA review has been both prompt and thorough. The fact that applications are considered by the regional offices – often by staff with strong ties to the area in question – has no doubt had a positive impact on the speed and quality of feedback and has allowed the NCUA to make informed assessments of applications from the very beginning of the review process.

The NCUA comment also points out that an applicant credit union's efforts would be "wasted" if the narrative is inadequate to prove the existence of the community sought. This is a truism in the sense that any unsuccessful initiative will result in both a transaction cost (e.g., expended capital, worker-hours) and an opportunity cost (the lost value of the benefit that might have been gained from alternative allocation of the

transaction cost resources). However, we have found our regional office to be flexible and cooperative in providing "advisory" reviews of proposed community charters that did not require the business plan and other elements to be completed, thus saving cost and effort by the applicant credit union. Wasted effort and expense have been kept to a minimum.

Another criticism of the existing multiple jurisdiction WDLC narrative chartering approach presented by the NCUA is the "risk of litigation." The American Bankers Association commentary submitted with respect to the proposed regulations makes clear that this risk can never be eliminated. Yet we feel that this specter of litigation has taken on a chilling effect far greater than the actual risk it represents. Past experience has shown that the vast majority of narrative based community charter applications have been approved without challenge. We know that opponents of the credit union system have been keenly watching the granting of community charters and have chosen to challenge but a very few. It stands to reason that those opponents have only been emboldened by the broadest reaching of community charter approvals and that the NCUA has done an outstanding job overall in chartering those communities presented for approval.

We submit that the issues identified as undesirable costs, inefficiencies and waste are in fact the appropriate transaction costs necessarily associated with good faith and honest attempts to identify *actual* (as opposed to deemed) "well-defined and local communities and neighborhoods", as envisioned under the Federal Credit Union Act. We should always strive to make improvements, but it makes no sense to abandon a system of field of membership chartering that has worked so well for so long.

One final point also bears mentioning. If the NCUA is correct in projecting the usefulness and desirability of its streamlined and objective statistical area approach to chartering, then the popularity of that option would necessarily remove the majority of the burdens imposed on credit unions and the NCUA under the narrative based approach. Allowing credit unions *the option to choose* the narrative approach would thus be far less costly under a dual statistical area/narrative based approach to multiple political jurisdiction community chartering that is presently the case, and would simultaneously preserve the ability for *any legitimate community* to receive a charter.

2. Grandfathered WDLCs

We fully support the stated approach that previously approved WDLCs will be available to subsequent applicants, regardless of the chartering standards in effect at the time of the later charter application.

In addition, we would urge that applications for charters based on WDLCs that are subsets of existing approved WDLCs also be granted charters on a grandfathered basis. The reason for this approach is that the NCUA's finding of adequate interaction and/or common interests within the entire previously granted WDLC necessarily means that the interaction and/or common interest element also exists on the subset community level.

3. Rural Districts.

Maine is a predominantly rural state and we are pleased to see the NCUA Board define this basis for community charters, which has been neglected for so long despite specific inclusion in the Federal Credit Union Act.

This definition is especially needed. Our experience has yielded significant difficulty in securing community charters in the more rural areas comprised of multiple political jurisdictions. In large part, the difficulties in these chartering efforts have been due to an unnecessarily restrained interpretation of the existing chartering standard requiring demonstration of "common interests *and/or* interaction." More specifically, the word "or" has been ignored and rural credit unions have been required to demonstrate *both* interaction *and* common interests. This has hampered the rural chartering effort because rural communities often lack the one central hub or core that is necessary to furnish the commuter statistics that the NCUA has increasingly required to justify the approval of a community charter. Demonstration of the clear common interests (and less concrete evidence of interaction) that do exist has not been recognized as sufficient despite the use of the word "or" in the IRPS manual. In this sense we applaud the Board's new found focus on the ways in which federal credit unions can better serve the needs of rural America.

However, we do see ways in which the Board's proposed definition can be improved. With respect to the population cap, we find no authority or requirement to justify the overriding stated goal to keep the population "small," as was stated in the Board's commentary on the proposed rule. In the absence of express direction in the Federal Credit Union Act, the total population should not be dispositive of whether a rural area should qualify as a district for chartering purposes. Instead, we urge an approach that focuses on common interests or an equivalent (and not interaction).

To the extent the Board finds that a population cap must be imposed, a larger population figure between 400,000 and 500,000 would be more appropriate, both so as to allow the reality of rural district common interests to prevail and to accommodate the

overriding principle of safety and soundness. Adequate membership rates are absolutely necessary to create and preserve the operating capital necessary to maintain the costly state of the art technology that today's consumers of financial services expect and to meet the equally costly burdens of regulatory compliance. Rural residents are used to driving long distances, but adequate capital is also necessary in order to maintain physical branch locations. A higher population cap would also allow for a more diverse membership base that would cushion the blow to a credit union resulting from the closure of a paper mill or potato processing plant, a flood or other natural disaster, or a crop failure or blight.

4. Underserved Communities

The NCUA has invited public comment specifically on alternative methodologies for implementing the Federal Credit Union Act's "underserved by other depository institutions" criterion.

We believe that a straight line "concentration of facilities" approach to this concern ignores the most important consideration in determining whether a community is underserved: the availability, quality and the cost of financial services to all economic strata of society and especially those of lower income and education levels.

A more appropriate approach should include information regarding not just the ratio of branches to population in a certain area, but also (a) the strength of the existing financial institutions with a presence in the community, (b) the array of services and financial products offered, (c) the costs, fees and relative interest rates charged for those services and products, and (d) the prevalence of so-called "pay day" and other lenders that engage in predatory practices.

5. Ability to Serve and Marketing Plans

Business and marketing plans are without question necessary components of the chartering and charter expansion process. They are indispensable planning tools for the federal credit unions and at the same time allow the NCUA to gauge the seriousness and sophistication with which the federal credit union has approached the chartering process and the expanded operations that will be required.

That said we are concerned by the requirement that the business and marketing plans be monitored for compliance for a three year period and that supervisory action be taken if a federal credit union should deviate from those plans.

Chartering related business and marketing plans are projections and aspirational goals set using past experience and informed assumptions about what the future will hold. But, as with any attempt to forecast future events, sound practice for any federal credit union will be to keep a weather eye on financial, market, regulatory, competitive industry, and internal operational conditions and to adjust plans and their implementation accordingly. It is not hard to see how, in certain circumstances, a blind adherence to a plan could present a threat to safety and soundness. The present proposed rule, as written, does not seem to allow adequate leeway for adjustments and we respectfully urge the removal of the three year review and supervisory action requirements.

To the extent that the Board does consider it necessary to include supervisory action, we urge that (a) it only be considered appropriate in the determination of clear bad faith, gross negligence or other breach of a fiduciary duty in the preparation or implementation of the plan in question, or in the event that the deviation from the plan materially jeopardizes the safety and soundness of the credit union; and (b) that a

mechanism be included allowing the federal credit union to present a revised business or marketing plan that takes changing factors into account for subsequent NCUA approval.

As it stands, this portion of the proposed rule adds uncertainty and may have the undesired effect of stifling needed expansion initiatives.

6. Timing

While any comment on this aspect of the proposed rule may in effect be moot because the NCUA Board may fail to act on it until the final rule is adopted, we respectfully fail to see the reason for a moratorium on new multiple political jurisdiction charters. The current IRPS chartering schedule has been in effect for years and has been shown to be effective. There is no compelling reason to place what amounts to an emergency embargo on federal credit union expansions of this type.

This provision should be deleted without delay.

7. Emergency Mergers

As with the other elements of the proposed rule, we understand and support the NCUA Board's desire to add objectivity and certainty to the definition of "danger of insolvency". Certainly the criteria specified are designed to address situations where the safety and soundness of an institution are in jeopardy. However, the finding of the "danger of insolvency" is a condition precedent to waiving field of membership compatibility elements that would otherwise apply, and the reasons for a danger of insolvency may be more acute or unexpected than provided for in the listed criteria.

Accordingly, we would suggest that the listed definitions be made non-exclusive and be expressly stated as guidance so as to allow the greatest possible for leeway and appropriate discretion in the approval of emergency mergers based on overriding and general safety and soundness concerns.

We welcome this opportunity to comment and participate in the rulemaking process and appreciate all of the hard work, professionalism and creativity that the NCUA staff has brought to bear on the issues to be addressed in the proposed rule.

Sincerely yours,
NORMAN, HANSON & DETROY, LLC

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APK/rch

cc: Mr. John Murphy